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STATUTORY INSTRUMENTS

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**1991 No. 587**

**The Housing Benefit and Community  
Charge Benefit (Subsidy) Order 1991**

**PART II**

**HOUSING BENEFIT SUBSIDY**

**Interpretation**

**2.—**(1) In this Part of this Order, unless the context otherwise requires—

“the Act” means the Social Security Act 1986;

“allowance” means a rent allowance;

“authority” means a housing, rating or local authority or, as the case may be, in Scotland, a levying authority;

“board and lodging accommodation” means—

(a) accommodation provided for a change which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which are both cooked or prepared and consumed in that accommodation or associated premises; or

(b) accommodation provided in a hotel, guest house, lodging house or some similar establishment,

but it does not include accommodation in a residential care home or nursing home within the meaning of regulation 19(3) of the Income Support (General) Regulations 1987<sup>(1)</sup> nor in a hostel within the meaning of regulation 12A of the Housing Benefit Regulations<sup>(2)</sup>.

“housing benefit subsidy” means subsidy under section 30(1) or (1A) of the Act (rate rebate, rent rebate, rent allowance and community charge rebate subsidy)<sup>(3)</sup>;

“rebate” means a rent, rate or community charge rebate excluding, in the case of England and Wales, any Housing Revenue Account rebates<sup>(4)</sup>;

“relevant date” has the same meaning as in Schedule 5;

“relevant year” means the year ending 31st March 1991;

“scheme” means the housing benefit scheme as defined in section 28 of the Act;

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987<sup>(5)</sup>;

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(1) [S.I. 1987/1967](#); relevant amending instruments are [S.I. 1986/663](#), [1445](#), [2022](#) and [1989/1678](#).

(2) Regulation 12A was inserted by regulation 5 of [S.I. 1990/546](#).

(3) Section 30(1A) was inserted by regulation 5(b) of [S.I. 1988/1483](#).

(4) See the definition of “relevant benefit” added to section 30(2) of the Social Security Act 1986 ([c. 50](#)) by the Local Government and Housing Act 1989 ([c. 42](#)), section 81(1).

(5) [S.I. 1987/1971](#), amended by [S.I. 1988/661](#), [909](#), [1444](#), [1843](#), [1971](#), [1989/43](#), [416](#), [566](#), [1017](#), [1322](#), [1990/546](#), [671](#), [1549](#), [1657](#) and [1775](#).

“the Rent Officers Order” means the Rent Officers (Additional Functions) Order 1990<sup>(6)</sup> or, as the case may be, the Rent Officers (Additional Functions) (Scotland) Order 1990<sup>(7)</sup>;

“the Scottish Regulations” means the Housing Benefit (Community Charge Rebates) (Scotland) Regulations 1988<sup>(8)</sup>;

“termination date” has the same meaning as in Schedule 5;

and other expressions shall have the same meaning as in the Housing Benefit Regulations or, as the case may be, the Scottish Regulations;

(2) In this Part of this Order—

“housing benefit qualifying expenditure” means the total of rebates and allowances granted by the authority during the relevant year, less—

- (a) the deductions specified in article 13; and
- (b) where, under sub-section (6) of section 28 of the Act<sup>(9)</sup> (arrangements for housing benefit), the authority has modified any part of the scheme administered by it, any amount by which the total of the rebates or allowances which it granted under the scheme during the relevant year exceeds the total of those which it would have granted if the scheme had not been so modified.

### **Amount of housing benefit subsidy**

3. The amount of an authority’s housing benefit subsidy for the relevant year—

- (a) for the purposes of section 30(2) of the Act (subsidy in respect of rebates or allowances) shall be the amount or total of the amounts calculated in accordance with article 4;
- (b) for the purposes of section 30(3) of the Act (subsidy in respect of the costs of administering housing benefit) may include an additional sum in respect of the cost of administering housing benefit calculated in accordance with Schedule 1.

### **Rebates and allowances**

4.—(1) For the purposes of section 30(2) of the Act, an authority’s housing benefit subsidy for the relevant year shall, subject to paragraph (2), be—

- (a) in the case of an authority to which articles 5, 6, 7, 8, 9, 10 and 11 do not apply, 97 per cent. of its housing benefit qualifying expenditure;
- (b) in the case of an authority to which at least one of those articles is relevant an amount equal to the aggregate of—
  - (i) 97 per cent. of so much of its housing benefit qualifying expenditure as remains after deducting from total qualifying expenditure the amount of expenditure attributable to the rebates or allowances to which each of those articles which is relevant applies; plus
  - (ii) the appropriate amount calculated in respect of the rebates or allowances under each such article,

plus in each case, the addition where applicable, under article 12.

(2) Where the authority is the Scottish Homes or a new town corporation in Scotland, its housing benefit subsidy for the relevant year shall include a further sum being—

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<sup>(6)</sup> S.I. 1990/428.

<sup>(7)</sup> S.I. 1990/396.

<sup>(8)</sup> S.I. 1988/1890, amended by 1989/43, 361 and 972, 1990/127.

<sup>(9)</sup> Section 28(6) allows modifications of the housing benefit scheme so as to provide for the disregard from income of a war disablement pension or a war widow’s pension.

- (a) in the case of an authority to which sub-paragraph (a) of paragraph (1) applies, 3.5 per cent. of its housing benefit qualifying expenditure but subject to the relevant maximum specified in column (2) of Schedule 3; or
- (b) in the case of an authority to which sub-paragraph (b) of paragraph (1) applies, 3.5 per cent. of so much of its housing benefit qualifying expenditure as remains after the deductions set out in paragraph (1)(b)(i), but subject to the relevant maximum specified in column (2) of Schedule 3.

### Backdated payments

5.—(1) Subject to paragraph (2), where—

- (a) during the relevant year an authority has, under paragraph (15) of regulation 72 of the Housing Benefit Regulations or, as the case may be, paragraph (18) of regulation 59 of the Scottish Regulations or paragraph (7) of article 2 of the Community Charge Benefits (Transitional) Order 1989<sup>(10)</sup> (time and manner in which claims are to be made), treated any claim for a rebate or allowance as made on a day earlier than that on which it is made; and
- (b) any part of that authority's housing benefit qualifying expenditure is attributable to such earlier period,

for the purposes of article 4(1)(b)(ii), the appropriate amount for the relevant year in respect of such part shall be 25 per cent. of the housing benefit qualifying expenditure so attributable.

(2) This article shall not apply in a case to which article 9 applies.

### Disproportionate rent increase

6.—(1) Subject to paragraphs (5) and (6), where the average rent increase of an authority's Category A tenants is greater than the average rent increase of their Category B tenants, for the purposes of article 4(1)(b)(ii), the appropriate amount for such part of the housing benefit qualifying expenditure as is attributable to rent rebates granted during the relevant year shall be 25 per cent of that portion of the housing benefit qualifying expenditure as is determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), the average rent increase shall be determined by comparing the average rent of Category A tenants or, as the case may be, Category B tenants on the first relevant date with their average rent on the second relevant date.

(3) For the purposes of paragraph (1), the portion of the housing benefit qualifying expenditure shall be determined in accordance with the formula—

$$A - \left( A \times \frac{B}{C} \right)$$

Where—

A is the total of rent rebates granted by the authority to Category A tenants and other tenants during the relevant year but shall not include any amount of expenditure attributable to rebates awarded in respect of amounts paid under section 35(2)(b) of the Housing (Scotland) Act 1987<sup>(11)</sup> for accommodation which is board and lodging accommodation;

B is the amount calculated in accordance with the formula—

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<sup>(10)</sup> S.I. 1989/1322.

<sup>(11)</sup> 1987 c. 26.

$$\frac{D}{E} \times 100$$

C is the amount calculated in accordance with the formula—

$$\frac{F}{G} \times 100$$

D is the average rent for Category B tenants on the second relevant date;

E is the average rent for Category B tenants on the first relevant date;

F is the average rent for Category A tenants on the second relevant date;

G is the average rent for Category A tenants on the first relevant date.

(4) In this article—

“average” means the arithmetic mean;

“Category A tenants” means tenants of the authority who on the first and second relevant dates are in receipt of rent rebates and reside at the same address on both dates, but shall not include a person required to pay an amount to an authority under section 35(2)(b) of the Housing (Scotland) Act 1987 for accommodation which is board and lodging accommodation;

“Category B tenants” means tenants of the authority who are not in receipt of rent rebates on the first and second relevant dates but reside at the same address on both dates, but shall not include a person required to pay an amount to an authority under section 35(2)(b) of the Housing (Scotland) Act 1987 for accommodation which is board and lodging accommodation;

“first relevant date” means a date, other than a day falling in a rent free period, determined by the authority occurring in March 1989; and

“second relevant date” means the same date occurring in March 1991 but if that date falls in a rent free period the nearest date in March 1991 to that date which is not in a rent free period;

“rent” means either—

(a) the payments specified in sub-paragraphs (a) to (j) in paragraph (1) of regulation 10 of the Housing Benefit Regulations (rent); or

(b) the eligible rent,

as the authority may determine, provided that wherever the expression “rent” occurs in paragraphs (1) to (3) it has the same meaning throughout.

(5) This article shall not apply in a case to which article 9 applies.

(6) In England and Wales this article shall only apply to rent rebate expenditure granted by new town corporations and the Development Board for Rural Wales.

### **Treatment of high rents**

7.—(1) Subject to paragraphs (3) and (4), where any part of the housing benefit qualifying expenditure of an authority within an area listed in column 1 of Schedule 4 is attributable to any allowance granted in respect of a person whose weekly eligible rent exceeds the threshold specified in relation to that area in column 2 of that Schedule, for the purposes of article 4(1)(b)(ii), the appropriate amount in respect of that allowance shall be calculated in accordance with paragraph (2).

(2) Where paragraph (1) applies—

(a) if the allowance granted is the same as or is less than the excess of eligible rent over the threshold, the appropriate amount shall be 25 per cent. of that part of the housing benefit qualifying expenditure attributable to such allowance.

- (b) if the allowance granted is greater than the excess of the eligible rent over the threshold, the appropriate amount shall be 25 per cent. of that part of the housing benefit qualifying expenditure attributable to such allowance which is equal to the excess, and 97 per cent. of that part of the housing benefit qualifying expenditure attributable to the balance.
- (3) Paragraph (1) shall not apply to an allowance payable by an authority in respect of rents which exceed the threshold—
  - (a) which are registered in respect of a dwelling under Part IV, V or VI of the Rent Act 1977<sup>(12)</sup> or Part V, VI, or VII of the Rent (Scotland) Act 1984<sup>(13)</sup> or which have been determined by a rent assessment committee in respect of a dwelling under Part I of the Housing Act 1988<sup>(14)</sup> or Part II of the Housing (Scotland) Act 1988<sup>(15)</sup>; or
  - (b) which have been referred to the rent officer under the Rent Act 1977 or the Rent (Scotland) Act 1984 but not registered by him because he is satisfied that the rent is at or below the fair rent level; or
  - (c) where the relevant tenancy is one to which, before 15th January 1989, the provisions of sections 56 to 58 of the Housing Act 1980<sup>(16)</sup> (assured tenancies) applied; or
  - (d) where the relevant dwelling is situated within the area of a housing action trust establishment under Part III of the Housing Act 1988<sup>(17)</sup> (Housing Action Trust Areas); or
  - (e) where the dwelling is an excluded tenancy by virtue of paragraphs 3 or 10 of Schedule 1A to the Housing Benefit Regulations<sup>(18)</sup> (excluded tenancies).
- (4) This article shall not apply in a case to which article 8 or 9 applies.

### **Rent officers' determinations**

**8.**—(1) Where this article applies, in respect of that part of the housing benefit qualifying expenditure which is attributable to allowances granted for the period beginning on the relevant date and ending on the termination date, the appropriate amount, for the purposes of article 4(1)(b)(ii), shall be calculated in accordance with Schedule 5.

- (2) This article applies where—
  - (a) an authority applies to a rent officer for a determination to be made under the Rent Officers Order in relation to dwelling; and
  - (b) the officer makes a determination under that Order.

(3) Except where paragraph (4) applies, this article applies where an authority is required to apply for a determination in relation to a dwelling during the relevant year under regulation 12A of the Housing Benefit Regulations<sup>(19)</sup> (requirement to refer to rent officers) which a rent officer would be required to make, but the authority fails to apply for the determination.

- (4) This article applies where—
  - (a) the dwelling (A) is in a hostel; and
  - (b) by virtue of regulation 12A(2) of the Housing Benefit Regulations an application for a determination in respect of that dwelling (A) is not required because the dwelling is regarded as similar to another dwelling (B) in that hostel in respect of which a determination has been made, and in such a case the determination made in respect of

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<sup>(12)</sup> 1977 c. 42.

<sup>(13)</sup> 1984 c. 58.

<sup>(14)</sup> 1988 c. 50.

<sup>(15)</sup> 1988 c. 43.

<sup>(16)</sup> 1980 c. 51; sections 56 to 58 were partially repealed by section 140 of, and Schedule 18 to, the Housing Act 1988 c. 50

<sup>(17)</sup> 1988 c. 50.

<sup>(18)</sup> Schedule 1A was inserted by regulation 13 of S.I. 1990/546.

<sup>(19)</sup> Regulation 12A was inserted by regulation 5 of S.I. 1990/546.

dwelling (B) shall, for the purposes of this article, be treated as if it were a determination in respect of dwelling (A).

(5) This article applies where a rent officer has made a determination in respect of a tenancy of a dwelling and by virtue of paragraph 2 of Schedule 1A to the Housing Benefit Regulations<sup>(20)</sup> (excluded tenancies) a new determination is not required in respect of another tenancy of the dwelling, and in such a case the determination made shall, for the purposes of this article, be treated as if it were a determination made in respect of that tenancy.

(6) Where a determination as to the rent which a landlord might reasonably be expected to obtain in respect of a dwelling is made by a rent assessment committee following a determination made by a rent officer under paragraph 1 of Schedule 1 to the Rent Officers Order, this article shall cease to apply in so far as it relates to a determination made by a rent officer under paragraph 1 of Schedule 1 to the Rent Officers Order from the date on which the rent assessment committee's determination takes effect.

### **Treatment of certain residential accommodation**

9. Where any part of an authority's housing benefit qualifying expenditure is attributable to rebates or allowances granted under the Social Security and Housing Benefits Act 1982<sup>(21)</sup> to persons in respect of accommodation provided under—

- (a) sections 21 to 24 and 26 of the National Assistance Act 1948<sup>(22)</sup> (provision of accommodation); or
- (b) section 21(1) of and paragraph 1 or 2 of Schedule 8 to the National Health Service Act 1977<sup>(23)</sup> (prevention, care and after-care); or
- (c) section 59 of the Social Work (Scotland) Act 1968<sup>(24)</sup> (provision of residential and other establishments) where board is available to the claimant,

for the purposes of article 4(1)(b)(ii), the appropriate amount for the relevant year shall be 90 per cent. of the housing benefit qualifying expenditure so attributable.

### **Homeless cases**

10.—(1) Where any part of an authority's housing benefit qualifying expenditure is attributable to a rebate granted in respect of the amount which a person is required to pay to an authority under

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(20) Schedule 1A was inserted by regulation 13 of S.I. 1990/546.

(21) 1982 c. 24.

(22) 1948, c. 29; section 21 was amended by the Local Government Act 1972 (c. 70), Schedule 23 paragraphs 1 and 2 and Schedule 30; the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 44 and Schedule 5; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; and the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 5. Section 22 was amended by the Social Work (Scotland) Act 1968 (c. 49), section 87(4) and Schedule 9, Part I; the Supplementary Benefits Act 1976 (c. 71) Schedule 7, paragraph 3; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the Social Security Act 1980 (c. 30), section 20, Schedule 4, paragraph 2(1) and Schedule 5, Part II the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1)(a) and the Social Security Act 1986 (c. 50), section 86 and Schedule 10, Part II, paragraph 32. Section 24 was amended by the National Assistance (Amendment) Act 1959 (c. 30), section 1(1); the National Health Service (Scotland) Act 1972 (c. 58), Schedule 6, paragraph 82; the Local Government Act 1972 (c. 70), Schedule 23, paragraph 2; the National Health Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 45 and the Housing (Homeless Persons) Act 1977 (c. 48), Schedule. Section 26 was amended by the Health Services and Public Health Act 1968 (c. 46), section 44 and Schedule 4 and the Social Work (Scotland) Act 1968 (c. 49), Schedule 9, Part I and applied by section 87(3); the Local Government Act 1972 (c. 70), Schedule 23, paragraph 2; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule and the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1)(b).

(23) 1977 c. 49; paragraphs 1 and 2 of Schedule 8 were amended by section 30 Schedule 10, Part I of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41); paragraph 1 was also amended by the Education Reform Act 1988 (c. 40) section 237 and Schedule 12 Part I, paragraph 22; paragraph 2 was also amended by section 148, Schedule 4 of the Mental Health Act 1983 (c. 20).

(24) 1968 c. 49.

section 69(2)(b) of the Housing Act 1985<sup>(25)</sup> or section 35(2)(b) of the Housing (Scotland) Act 1987<sup>(26)</sup>, as the case may be, for board and lodging accommodation made available to that person, and the amount of weekly eligible rent exceeds the appropriate maximum amount specified in column (2) of Schedule 6 for the area in which the accommodation is situated, for the purposes of article 4(1)(b)(ii), the appropriate amount shall be—

- (a) if the rebate granted is the same as or less than the difference between the weekly eligible rent and the appropriate maximum amount, nil per cent. of that part of the housing benefit qualifying expenditure attributable to such rebate;
- (b) if the rebate granted is greater than the difference between the weekly eligible rent and the appropriate maximum amount, nil per cent. of that part of the housing benefit qualifying expenditure attributable to such rebate which is equal to the excess, and 97 per cent. of that part of the housing benefit qualifying expenditure attributable to the balance.

(2) In paragraph (1) the appropriate maximum amount shall be determined in accordance with the formula

$$(A \times B) \div C$$

Where—

A is the weekly amount specified in column (2) of Schedule 6 for the area in which the accommodation is situated specified in column (1) of that Schedule;

B is the number equal to the number of persons aged 11 or over in respect of whom the accommodation has been made available; and

C is the product of £6.30 multiplied by the number equal to the number of persons aged under 11 in respect of whom the accommodation has been made available.

### Overpayment of rebates or allowances

**11.**—(1) Where any part of an authority's housing benefit qualifying expenditure is attributable to an overpayment of rebates or allowances made and discovered in the relevant year, for the purposes of article 4(1)(b)(ii), the appropriate amount for the year in respect of such part shall be calculated in accordance with paragraph (2).

(2) The appropriate amount shall be—

- (a) in the case of an overpayment caused by an error of the authority making the payment 15 per cent. of that part of the housing benefit qualifying expenditure attributable to the overpayment; and
- (b) in the case of an overpayment caused by official error, 97 per cent. of that part of the housing benefit qualifying expenditure attributable to the overpayment as has not been recovered by the authority and nil per cent. of that part of the housing benefit qualifying expenditure attributable to the overpayment as has been recovered by the authority; and
- (c) in the case of a technical overpayment, 15 per cent. of that part of the housing benefit qualifying expenditure attributable to the overpayment for a period not exceeding 2 benefit weeks beginning on the benefit week after week in which the change of circumstances is disclosed to the authority and thereafter nil per cent. of the housing benefit qualifying expenditure attributable to the overpayment; and
- (d) in the case of any other overpayment, 25 per cent. of that part of the housing benefit qualifying expenditure attributable to the overpayment.

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(25) 1985 c. 68.

(26) 1987 c. 26.



(3) In paragraph 2(b) “overpayment caused by official error” means an overpayment caused by a mistake made or something done or omitted to be done by an officer of the Department of Social Security or the Department of Employment, acting as such, or a decision of an adjudication officer, social security appeal tribunal or Social Security Commissioner appointed in accordance with section 97 of the Social Security Act 1975<sup>(27)</sup> (adjudication by adjudication officers, social security appeal tribunals and Commissioners) where the claimant, a person acting on his behalf or any other person to whom the payment is made did not cause or materially contribute to that mistake, act or omission.

(4) In paragraph 2(c) “technical overpayment” means that part of an overpayment which occurs as a result of a rebate being granted in advance and a change in circumstances reduces or eliminates entitlement to that rebate beginning on the benefit week following the week in which the change is disclosed to the authority.

(5) This article shall not apply to that part of any rebate or allowance to which paragraph 15 of regulation 72 of the Housing Benefit Regulations or, as the case may be, paragraph (18) of regulation 59 of the Scottish Regulations or paragraph (7) of article 2 of the Community Charge Benefits (Transitional) Order 1989<sup>(28)</sup> (time and manner in which claims are to be made) applies.

#### **Addition to housing benefit subsidy**

**12.—**(1) The addition referred to in article 4(1) shall be of the following amounts where—

- (a) following the loss, destruction or non-receipt, or alleged loss, destruction or non-receipt of original instruments of payment, an authority makes duplicate payments and the original instruments have been or are subsequently encashed, an amount equal to 25 per cent. of the amount of the duplicate payments;
- (b) subject to paragraph (2) during the relevant year it is discovered that an overpayment of rebate or allowance has been made in either or both the years ending 31st March 1989 and 31st March 1990, as the case may be, and an amount equal is to be deducted under article 13 in relation to that overpayment, an amount equal to—
  - (i) in the case of an overpayment caused by an error of the authority making the payment 15 per cent. of the overpayment;
  - (ii) in the case of an overpayment caused by official error within the meaning of article 11(3), 97 per cent. of so much of the overpayment as has not been recovered by the authority and nil per cent. of the overpayment which has been recovered by the authority; or
  - (iii) in the case of a technical overpayment within the meaning of article 11(4), 15 per cent. of the overpayment for a period not exceeding 2 benefit weeks, beginning on the benefit week after the week in which the change of circumstances is disclosed to the authority and thereafter nil per cent. of the overpayment;
  - (iv) in the case of any other overpayment, 25 per cent. of the overpayment.

(2) The amount under paragraph (1)(b) shall not include an amount in relation to an overpayment of community charge rebate made in the year ending 31st March 1990 but discovered in the relevant year as a result of a reduction in the amount of a person is liable to pay in consequence of regulations made under section 9A of the Abolition of Domestic Rates Etc (Scotland) Act 1987<sup>(29)</sup> (reduced liability for personal community charge).

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<sup>(27)</sup> 1975 c. 14. Subsections 97(1)-(2E) were substituted for subsections 97(1) and (2) by Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 8, paragraph 2; in subsection 97(3) a word was inserted by the Social Security Act 1979 (c. 18), section 9(1) and words were substituted by the Social Security Act 1980 (c. 30), section 12.

<sup>(28)</sup> S.I. 1989/1322.

<sup>(29)</sup> 1987 c. 47. Section 9A was inserted by section 143 of the Local Government and Housing Act 1989 (c. 42).



### **Deductions to be made in calculating housing benefit subsidy in respect of rebates or allowances**

**13.—**(1) The deductions referred to in article 2(2) are, subject to paragraph (2), to be of the following amounts where—

- (a) a tenant of an authority, who is in receipt of a rent rebate, while continuing to occupy, or when entering into occupation of, a dwelling as his home, either under his existing tenancy agreement or by entering into a new tenancy agreement—
  - (i) is during, or was at any time prior to, the relevant year able to choose whether or not to be provided with any services, facilities or rights and chooses or chose to be so provided; or
  - (ii) is during, or was at any time prior to, the relevant year able to choose either to be provided with any services or facilities or, whether or not in return for an award or grant from the authority, to provide such services or facilities for himself; or
  - (iii) would be able during, or would have been able at any time prior to, the relevant year to exercise the choice set out in sub-paragraph (i) or (ii) of this paragraph if he were not or had not at that time been in receipt of a rent rebate,the amounts attributable during the relevant year to such services, facilities or rights whether they are or would be expressed as part of the sum fixed as rent, otherwise reserved as rent or expressed as an award or grant from the authority;
- (b) during the relevant year a person becomes entitled to a rent-free period which has not been, or does not fall to be, taken into account in calculating the amount of rent rebate to which he is entitled under the Housing Benefit Regulations, the amount of rebate which is or was payable to him in respect of such rent free period;
  - (i) made to a tenant for a reason unrelated to the fact that he is a tenant;
  - (ii) made under a statutory obligation;
  - (iii) made under section 137 of the Local Government Act 1972<sup>(30)</sup> (power of local authorities to incur expenditure for expenditure for certain purposes not otherwise authorised);
  - (iv) except where sub-paragraph (a)(ii) applies, made as reasonable compensation for reasonable repairs or redecoration the tenant has, or has caused to be, carried out whether for payment or not and which the authority would otherwise have carried out or have been required to carry out; or
  - (v) of a reasonable amount made as compensation for loss, damage or inconvenience of a kind which occurs only exceptionally suffered by the tenant by virtue of his occupation of his home;
- (d) during the relevant year the weekly amount of rebate or allowance is increased under paragraph (8) of regulation 69 of the Housing Benefit Regulations or, as the case may be, regulation 57 of the Scottish Regulations (calculations of weekly amounts), the amount of such increase;
- (e) during the relevant year it is discovered that a payment of community charge rebate has been overpaid in the relevant year as a result of the reduction in the amount a person is liable to pay in consequence of regulations made under section 9A of the Abolition of Domestic Rates Etc (Scotland) Act 1987, the amount of the overpayment;

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<sup>(30)</sup> 1972 c. 70; section 137 was amended by the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), section 44; the Local Government Finance Act 1982 (c. 32), section 34, Schedule 5, paragraph 5; and by the Local Government Act 1986 (c. 10), section 3.

- (f) during the relevant year it is discovered that a rebate or allowance has been paid under the Social Security and Housing Benefits Act 1982(31) in excess of entitlement, the amount of such overpayment;
  - (g) during the relevant year an amount is recovered in relation to an overpayment of a rebate or allowance which was caused by official error within the meaning of article 11(3) where the overpayment had occurred and been discovered in a year earlier than the relevant year, the amount so recovered;
  - (h) during the relevant year it is discovered that an overpayment of rebate or allowance has been made in either of or both the years ending 31st March 1989 and 31st March 1990, as the case may be the amount of such overpayment, but only to the extent that—
    - (i) the amount of the overpayment or any part of it has not been deducted from qualifying expenditure under article 3 of the Housing Benefit Subsidy Order 1989(32) or of the Housing Benefit Subsidy Order 1990(33); and
    - (ii) the amount of the overpayment or any part of it does not include an amount to which paragraph (15) of regulation 72 of the Housing Benefit Regulations or, as the case may be, paragraph (18) of regulation 59 of the Scottish Regulations (time and manner in which claims are to be made) applied.
- (2) Where in relation to any amount of a rebate or allowance a deduction falls to be made under two or more sub-paragraphs of paragraph (1) only the higher or highest or, where the amounts are equal, only one amount, shall be deducted.

#### **Modification of housing benefit subsidy on payments in excess of entitlement**

**14.**—(1) Notwithstanding any provision made under the Social Security and Housing Benefits Act 1982 in respect of housing benefit paid in excess of entitlement, where an overpayment of benefit to which any such provision applies under that Act in a certificated case is discovered in the relevant year, an authority's housing benefit subsidy in respect of such a payment shall be calculated as set out in paragraph (2).

- (2) The amount of that subsidy shall be—
- (a) in the case of an overpayment caused by an error of the authority making the payment, 15 per cent. of the overpayment; and
  - (b) in the case of an overpayment caused by official error within the meaning of article 11(3), 97 per cent. of so much of the overpayment as has not been recovered by the authority; and
  - (c) in the case of any other overpayment, 25 per cent. of the overpayment.

(3) In paragraph (1) “certificated case” has the meaning assigned to that expression by regulation 2(1) of the Housing Benefits Regulations 1985(34) (interpretation) as previously in force.

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(31) 1982 c. 24.

(32) S.I. 1989/607.

(33) S.I. 1990/785.

(34) S.I. 1985/677.